

**HOLMES DENIES  
MOTION  
TO SET ASIDE  
VERDICT**

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**But He Thinks Frank  
Was  
Deprived of Process  
of Law.**

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Washington, November 28—Announcement was made by counsel for Leo M. Frank, the Atlanta, Ga., Factory Superintendent, convicted of the murder of Mary Phagan, that Justice Holmes had refused to issue a Writ of Error for the Supreme Court to review the Case. At the same time, Justice Holmes rendered an informal opinion, according to one of Frank's Attorneys, in which he stated he had very serious doubts if Frank had had a fair trial, because of the trial taking place in the presence of a hostile demonstration and seemingly dangerous crowd. Application will be made to the entire Court on Monday for the writ.

The informal statement of Justice Holmes follows:

"I understand that I am to assume that the allegations of fact in the motion to set aside are true. On those facts, I very

seriously doubt if the petitioner has had due process of law—not on the ground of his absence when the verdict was rendered so much as because of the trial taking place in the presence of a hostile demonstration and seemingly dangerous crowd, thought by the presiding judge to be ready for violence unless a verdict of guilty was rendered. I should not feel prepared to deny a Writ of Error if I did not consider I was bound by the decision of the Supreme Court of Georgia that the motion to set aside came too late, and even I thought that the suggestion of waiver was not enough to meet the constitutional question and the right to bring the Case here. I understand from the headnote and the opinion that the Case was finished when the previous motion for a new trial was denied by the Supreme Court, and as Cases must be ended at some time, that, apart from any question of waiver, the second motion came too late. I think I am bound by this decision, even if it reverses a long line of Cases and the counsel for the petitioner were misled to his detriment, which I do not intimate to be my view of the Case. I have the impression that there is a Case in which the ground that I rely on as showing want of due process of law, was rejected by the Court with my dissent, but I have not interrupted discussion with counsel to try to find it, if it exists.”

### **Lamar’s Decision.**

Attorney Henry Alexander, representing Frank, today made public the opinion announced by Justice Lamar in denying the writ last Monday. In this opinion, Justice Lamar referred to the decision of the Georgia Supreme Court to the effect that a defendant, having elected to make a motion for a new trial and judgment denying the same having been affirmed by the Supreme Court, could not thereafter make a motion to set aside the verdict on the ground that he had been absent from the Courtroom when the verdict was rendered.

In the motion to set aside, it was stated that several times during the trial the crowd, both inside and outside the Courtroom, applauded when the state scored a point, those on the outside shouting and hurraing. Also that on the last day of the trial, a large and boisterous crowd of several hundred persons gathered around the Courthouse and carried the Solicitor General on their shoulders across the street. It was

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stated that this crowd did not disperse while the jury deliberated, but continued its demonstrations, all having an effect on the minds of the jury. It was set forth that the jury was intimidated by the trial judge conferring with the chief of police of Atlanta and the colonel of the Fifth Georgia regiment in Atlanta in open Court in the presence of the jury, and that the demonstrations actuated the Court to request the defendant and his counsel to absent themselves from the Courtroom when the verdict was received in open Court. It added that on Monday, April 28, 1913, the entire Press appealed to the trial Court to adjourn Court that day until next Monday, owing to the great public excitement, and that on Monday, when the Court met again the excitement had not subsided.

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Leonard J. Haas, one of Leo M. Frank's Attorneys, is in Washington today to aid Attorney Harry A. Alexander in the fight being waged to get the famous Case into the United States Supreme Court. They will make their next move, it is understood, when it is finally determined whether they can make their plea before the full Court.

Attorney Henry C. Peeples returned from Washington on Wednesday and will remain in Atlanta awaiting developments before going back to the Capital to aid in the further fight.

It is expected that unless the High Court should grant the writ and issue a stay of execution the death penalty will be imposed on Frank in the Criminal Court here next Wednesday. The remittitur from the Supreme Court which won the request of Attorneys representing the condemned man pending the outcome before the high Court, will be handed down Monday afternoon or Tuesday morning.

Frank's Attorneys are reticent concerning the departure of Mr. Haas to Washington and the plans of procedure, stating that no conclusion had been reached as to what course will be followed. Several plans are under consideration.

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